

New Castle City Planning Commission Meeting
Minutes
1 Municipal Boulevard, New Castle, DE
September 25, 2023 – 6:30 p.m.

Members Present: Margo Reign, Acting Chair
Kristin Zumar
Tamara Stoner
Timothy Gibbs
Brie Rivera
Cynthia Batty

Absent: Keaira Faña-Ruiz
Vera Worthy

Also Present: Christopher Rogers, City Planner
Shawn Tucker, Esquire

Ms. Reign called the meeting to order at 7:00 p.m. The assembly stood for the Pledge of Allegiance. Roll call followed and a quorum to conduct business was declared.

Minutes

A motion to approve the Minutes of the July 5, 2023, meeting was made by Mr. Gibbs. The motion was seconded by Ms. Zumar. The motion was approved with a vote of 5 in favor and 1 abstention (Ms. Batty).

Public Comment

Brian Mattaway – 628 Delaware Street

Mr. Mattaway thanked the Commission for its work to make the City better.

Phil Gross – 1301 13th Street

Mr. Gross suggested that the Commission reconsider when Public Comment is heard during a meeting in order to provide the public to comment on what is presented and/or discussed during the meeting.

Mr. Gross thanked Mr. Tucker for doing a presentation so that the public can better understand what is being proposed.

Mr. Gross opined that elected officials should not attend any of the Commission or Board Meetings because of potential undue or unnecessary issues when it comes to the autonomy of the Board. He added that it is a conflict and there is no need for an elected official to attend any of the meetings.

Possible Motion, Discussion and Vote on the Planning Commission’s Recommendation on Ordinance 540

Mr. Rogers stated that proposed Ordinance 540 was presented to City Council for a first reading. He explained that the role of the Planning Commission is to make a recommendation to City Council. Mr. Rogers also explained the two versions of Ordinance 540 noting that:

- Version 1 allows the City Council to require a zoning map petition to be accompanied by a concept plan. It does not require it.
- Version 2 is prescriptive, stating: “Amendments initiated by petition must be accompanied by a concept plan ...”

Mr. Rogers added that the Commission is not bound by those two versions if it has another idea.

During discussion it was opined that Version 2 is addressing vagueness of the language of Version 1. In response to a concern expressed by Ms. Batty, Mr. Rogers clarified that if someone asks for a rezoning, Version 1 allows the Council to require a plan. Ms. Reign opined that Version 2 brings the City into alignment with New Castle County requirements. Mr. Rogers stated his understanding that submitting a concept plan is done quite often, but he was not sure if it is codified.

Ms. Zumar opined there could be a perceived bias by City Council in choosing who is and who is not required to submit a concept plan. In response to a question from Ms. Batty, Mr. Rogers stated that in his tenure as City Planner there have not been many applications that rose to the level that necessitated the request for a plan. Mr. Rogers stated that AECOM recommends Version 1. Mr. Rogers added that if a rezoning application were submitted to correct a mistake for land use that were improperly zoned the homeowner would be hard-pressed to come up with a concept plan. Ms. Batty stated that in those cases it would be an undue burden.

Mr. Gibbs noted that New Castle County does require a concept plan for “conceptual architectural renders for proposed site development shall be required for all rezoning in all major land development plans.” It was suggested that the language in the Ordinance be revised to clarify when a concept plan is required. In response to a question from Ms. Reign, Mr. Rogers explained that the Version 2 of the Ordinance is before the Planning Commission because Councilperson Day wanted the City Zoning Ordinance to be more reflective of the County’s process.

A motion was made by Ms. Batty to recommend to City Council that they adopt Version 1 of Ordinance 540. The motion was seconded by Mr. Gibbs. The motion was unanimously carried.

Concept Plan Review and recommendation to Board of Adjustment for special exception for 610 W 7th St

Mr. Tucker, representing Freedom Development, identified those individuals who might be called upon to testify:

- John Joffe – Freedom Development
- Thomas McKenna, Architectural Project Manager – Bernardon
- Trevor Fern, Engineer – McBride & Ziegler

- Greg Swift, Engineer – McBride & Ziegler
- Nicole Kline-Elsier, Traffic Engineer – Bowman
- Bill Ganse, Commercial Real Estate Broker
- Gary Burcham, Landscape Architect – Burcham & Associates
- Doug Seavy, Engineer, Landmark Science & Engineering

Mr. Tucker stated that this is a concept plan review as required by the City Code. The location of the site was identified and described.

Mr. Tucker invited Mr. Ganse to come forward to testify. In response to questions from Mr. Tucker, Mr. Ganse stated that:

- He previously assessed the commercial viability of the general area in New Castle and is very familiar with the subject property.
- He has been involved in considering the subject property and its development for approximately 12 years, dating back to when the Seeds of Greatness Church was interested in the property.
- The subject property is not viable for a commercial retail project.
- He understands that the Garrison apartments are 100% occupied, but that its retail areas are not occupied to that extent.

In response to a question from Ms. Batty, it was explained that there are a number of reasons that a retail aspect of the project was not proposed, and that the lack of retail tenants at The Garrison was included in the decision.

Ms. Batty stated that the Downtown Gateway (DG) was developed to encourage a community life, and that the proposed project could potentially add thousands of residents, which would completely change the complexion of the area. She added that the failure of the Garrison to have retail is not a valid argument.

In response to a question from Ms. Zumar, Mr. Ganse stated that he doesn't see that location as a place people will want to go to shop, and he would not recommend that the site be developed for commercial retail. He added that apartments do fall under "commercial," adding that a church, school or apartments are all a good fit for that area. In response to a question from Ms. Rivera, Mr. Ganse stated that cleanup of the site would have to be done for any development in the site.

In response to a question from Mr. Rogers, Mr. Ganse stated that a formal market study has not been done on the subject property; adding that the subject property has been marketed but has received no interest. Mr. Tucker stated that the DG area does encourage commercial, adding that this property has been vacant for 20 years with only two parties expressing interest in advancing development to the Board.

Mr. Tucker explained the layout of the proposed development on the site. In response to a question from Ms. Batty, Mr. Tucker briefly explained the wetlands identified on the proposed rendering. Mr. Tucker added that up to 5,000 square feet is being proposed as non-residential that would be walkable for residents of the development, which would replace four apartment

units. Ms. Reign opined that there should be adequate parking for any retail space in the development.

Mr. Tucker explained the proposed makeup of the development:

- 265 1-bedroom/1-bath units
- 132 2-bedroom/2-bath units
- 594 parking spaces (1.5 parking spaces per unit)

Mr. Tucker noted that with the proposed retail space, the total number of units would be 392.

Mr. Burcham, Landscape Architect, came forward to explain the proposed landscaping plan for the proposed development. Mr. Burcham noted that the plan is in compliance with the City Code (1 tree for every 5 parking spaces, at least 1 street tree every 40 feet, and additional plantings to “enhance the aesthetic appearance along streets, parking lots and other pedestrian areas” that will limit views into the interior of the development). The landscape plan also includes street furnishings and lighting along the sidewalks.

Regarding the wetlands, Mr. Tucker stated that the project will preserve the existing watercourse, and there is a substantial green buffer on the east side of the site. Mr. Tucker also noted that the proposed impervious coverage is 56%; adding that the code permits impervious coverage of up to 80%. Mr. Burcham identified the types of trees that would be used; noting that he uses native plants almost exclusively.

Mr. Seavy, Professional Engineer, came forward to explain the wetlands and site remediation. He identified the watercourse area of the site that was enhanced by the Conservation District and explained that the wetlands area which was identified as being contaminated and will be capped. The contaminated area was found to be contaminated with elevated levels of metals (magnesium, iron, chromium, and old coal). No petroleum contamination was identified. In response to a question from Ms. Reign, Mr. Seavy stated that the contaminated wetlands will be capped with 2’ of fill and that there are no endangered species on the site that will be impacted by capping the wetlands.

Mr. Tucker added that the applicant met with DNREC staff to discuss their expectations and distributed a copy of their comments to the Commissioners. The DNREC comments were shared with the City. Mr. Tucker noted that:

- DNREC approved the idea of filling the undesirable wetlands.
- The site will be retested to ensure that there has been no new dumping on the site.
- DNREC’s comments state that “DNREC RS maintains that placement of a 2’ cap will likely be sufficient to render the site suitable for residential development.”
- The new wetlands area will not be touched.

Mr. Seavy explained how sampling will be done and the source of the fill. He also stated that unless the soil is disturbed, the remediation will only have to be done once.

Mr. Tucker stated that sea level rise projections for 2050 (.9’ - 2’ rise) and 2100 (2’ - 5’ rise) were modeled for the site using the DNREC sea level rise tool, and there was no rise impact on

the site for 2050. There was impact using the 2100 model; however, with the addition of the 2' fill (subject to final engineering), the infrastructure of the proposed site would be outside the 5' worst-case scenario for 2100. Mr. Tucker also stated that the one residential property adjacent to the site will not flood in the 5' 2100 worst-case scenario. Mr. Rogers noted that the impact to the 100 year flood plain as the result of the sea level rise scenario was not addressed. Mr. Tucker concurred, noting that even FEMA will not model that.

In response to a question from Mr. Rogers, Mr. Swift stated that the FEMA flood plain on the site is for the most part Elevation 9. The grade in the parking lot will be Elevation 10 (10' above sea level), and the finished floors of the apartments will be 1.5' above that (11.5'). Mr. Swift added that they will assure that the site and the buildings are above the FEMA flood plain (i.e., 2' of fill plus raising the site to be above the FEMA flood plain Elevation 9).

Mr. Swift explained the process that will be followed to place the site above the FEMA floodplain, noting that once the plan is implemented an as-built plan will be submitted to FEMA certifying that the site has been graded as per the plan and a permit from FEMA to take that area out of the flood plain will be issued. Mr. Swift added that much of the site is already at Elevation 9 or above with the exception of areas close to 7th Street which is below Elevation 9.

Relative to drainage, Mr. Swift explained that ultimately less water will come in from the river. Mr. Rogers noted that the FEMA Conditional Letter of Map Revision (CLOMR) is administered by Mr. Bergstrom for New Castle. He added that filling in a tidal floodplain basin has an infinitesimal impact on adjacent properties.

Ms. Kline-Elsier came forward to speak about traffic. Mr. Tucker noted that the developer met with Chief McCabe, who shared a video of backed-up traffic on Rt. 9 in both directions due to flooding at a bridge in the area. Mr. Tucker stated that DelDOT has been contacted about installing an advance warning system at that bridge on Rt. 9 that would be tied to signage warning of flooding and redirecting traffic before a log-jam occurs; adding that the developer would like to become a part of that solution. Mr. Tucker also noted that DelDOT has issued a Letter of No Objection for several other improvements in that area.

Ms. Kline-Elsier provided more detail on the Traffic Impact Study, which is a collaborative process between DelDOT, the City and her Team. Regarding flooding on Rt. 9, Ms. Kline-Elsier explained how the advance warning system will work and how the Traffic Impact Study will tie into other committed developments and improvements tied to them.

In response to a question from Ms. Rivera, Ms. Kline-Elsier explained that the one access point to the proposed development is designed as a boulevard, which is wider; but added that it will be analyzed from an operational standpoint to determine if one access point is sufficient. Mr. Tucker noted minimizing curb cuts is encouraged by the DG, and if the Traffic Study shows that a second access point is required, the proposed closure of a curb cut on Larkin Street will be utilized as a second access point. In terms of pedestrian connectivity that is encouraged by the DG, the developer is also exploring a cross-walk on 7th Street with DelDOT. Ms. Kline-Elsier explained the items that will be reviewed by DelDOT. She stated that the Traffic Study will be

done holistically to determine what committed developments will be required to be part of the Study.

Mr. Rogers suggested that the applicant meet with emergency services providers to see if there may be a hidden secondary entrance to the site for emergency vehicles in the event of a blockage at the main entrance. Mr. Tucker stated that the applicant met with Chief Majewski and will keep him in the loop as the plan progresses to ensure that emergency access is provided. Chief Majewski asked that the developer work closely with him to determine the placement of fire hydrants.

Ms. Batty requested that cut-through traffic also be considered in the Traffic Study, particularly on 3rd Street and 6th Street. She noted that 3rd Street belongs to the City and 6th Street is a State Street, and suggested that an effort be made to have 6th Street made a City street. She added that residents on 7th Street are also impacted. Mr. Tucker noted that Chief McCabe is working with DelDOT to see how access to those roads can be better controlled.

Mr. McKenna came forward to review the architectural design and DG standards.

- The project includes a mix of three- and four-story buildings.
- The seven three-story buildings will have covered stairways.
- The three four-story buildings will have elevators.
- Construction will be a mix of brick and vinyl siding.
- There will be either a patio or balcony on each unit.
- Double-hung windows are vertically aligned.
- There is a one-story clubhouse.

Mr. Tucker stated that the project has a density of approximately 23.8 units per acre, which is in line with what the Board of Adjustment recently set for other approved projects.

In response to a question from Ms. Reign, Mr. Joffe explained the demographic is expected to be mid-to-high income. It was noted that housing for new graduates to mid-level income as well as older residents who may be interested in downsizing is also needed.

Ms. Zumar read the rental levels, income qualifications, and unit descriptions for the Helm, The Garrison and Deemer's Landing. She noted that the Comprehensive Plan is looking for affordable home ownership, and expressed her concern that by adding the proposed rental units to the existing projects that have been approved, the percentage of home ownership would be 49% at best. Mr. Tucker stated that price points could be discussed, noting that the applicant is trying to balance the cost of the design with affordability. Ms. Batty added that they want an integrated community.

Ms. Reign noted that Delaware State Housing Authority has a program to offset some of the cost of some multi-family projects and suggested that the developer look into that in an effort to lower rental. Mr. Joffe stated he would be happy to entertain a dialog with anyone; however he added that many of those programs often put different qualifications on the project for those

funds. He noted that the price points they are considering are designed to ensure that all units are rented.

Mr. Tucker noted that the Delaware State Housing Authority did have comments on the project, and Ms. Reign noted that they were very supportive of the project.

Mr. Tucker stated that the applicant is seeking a favorable recommendation for the concept to advance to the Board of Adjustment.

Mr. Rogers stated that multi-family unit developments are allowed with special exception in the DG zone. The role of the Planning Commission is to review the concept plan and make a recommendation to the Board of Adjustment on the special exception. He stated that the Commission should use the Comprehensive Plan as a guide in making a recommendation, and that the recommendation should not be bound to matters that are within the purview of the Board of Adjustment. Mr. Rogers stated that if affordable housing is rolled into the Commission's recommendation, they should keep in mind that that it has to be reasonably enforceable by the City; and that the City may not have a program in place to keep track of rent for 10-20 years.

Ms. Rivera expressed her support of the concept plan, taking into account traffic concerns, making sure remediation is done correctly and that the project does not interfere with adjacent properties. She added that she felt the project will fix what is currently an eyesore and an environmental issue. Ms. Batty added taking into account traffic in the Historic area.

Ms. Zumar stated her concern about the number of current projects that have been approved. Based on those projects there are 450-627 rental units depending on how River Edge handles their single family homes and townhouses. She stated that the overall demographic of the City is being changed. Ms. Zumar presented data on home ownership vs rentals:

<u>Home Ownership vs Rental</u>	<u>Home Ownership</u>	<u>Rentals</u>
2020 Census	62.5%	37.5%
With approved projects*	55.6%	44.4%
Adding this project at rental only	49.1%	50.6%

* (if River Edge single family, townhouses and twins are sold)

Ms. Zumar stated that how those changes in demographic will affect the City is unknown. She opined that moving too fast to approve this project in addition to the three recent projects already approved would be detrimental to the City's future.

During discussion Ms. Zumar stated that part of the Comprehensive Plan is to increase affordable opportunities for home ownership in the City, not just to live in the City. This project is only adding rental units with leases. Ms. Zumar opined that it will be some time before the impact of the three projects already approved is realized, and approving another large project that will change the demographic of the City is an extreme change without being thoughtful that could be extremely detrimental to the City.

Ms. Batty noted that the number of outside visitors coming to the City and spending money is increasing, which is creating an even more rich environment for all residents. She added that she has been told that young professionals are not interested in home ownership, and if that is happening the way to get wealthy young professionals to come to the City is to provide housing for them that meets their criteria. Ms. Zumar noted that those young professionals will want to buy houses eventually, and they will not be buying in New Castle.

In response to a question from Mr. Gibbs, Ms. Zumar stated that her view might change if the developer were to sell some of the units and change the mix.

Ms. Reign gave Mr. Joffe permission to address the Commission. Mr. Joffe stated that River Bend will have approximately 200 for-sale houses, which will help balance the for-sale/for-rent demographic. He added that young professionals and older residents are very interested in rentals. Mr. Rogers added that the City being able to control home ownership vs rental has been discussed in the past, but there is only so much that can be done given the regional market forces.

Mr. Rivera expressed her hope that a project like this will increase home values in Dobbinsville, noting that there are some vacant properties that could be sold and rejuvenated. Mr. Joffe stated that nice new projects will help increase property values.

Ms. Stoner stated that she would support the recommendation based on the presentation and the experts that testified. She liked the collaboration between DelDOT and the City and the fact that the wetlands, sea level rise, and contamination are being addressed.

Ms. Reign asked if the Commission could get an impact study of rentals vs homeownership on a small municipality. Mr. Rogers stated that the Commission is making a recommendation to the Board of Adjustment on a concept plan. He opined that requesting a study on rentals vs homeownership and what the ideal mix is will potentially be a dramatic change to what the applicant is seeking; adding that there are different requirements for rentals and condos and the applicant cannot just change their model to make rentals into condos.

A motion was made by Ms. Rivera to make a favorable recommendation conditioned that (1) the applicant submit for review a Traffic Impact Study to be submitted and reviewed by DelDOT and the City Engineer prior to the Board of Adjustment consideration for a special exception, (2) adequate remediation of the site, (3) the approval of the DNREC Plan, and (4) that the possibility of affordable housing is considered. The motion was seconded by Ms. Batty. The motion was carried with a vote of five in favor and one opposed.

Comments from Commissioners

Affordable Housing

Ms. Batty suggested that the Commission make looking into affordable housing part of the mission of the Planning Commission. Mr. Rogers suggested that affordable housing be added to a future agenda with an eye to making a recommendation to City Council. He also suggested

that the Commission wait until the five-year review of the Comprehensive Plan in 2025 and seek to get it embedded in the Comprehensive Plan.

Ordinance 540

Ms. Batty recommended that a reason for recommending Version 1 should be given. Mr. Rogers stated that the decision has already been made and he will pass that on to City Council.

Attendance

Ms. Batty suggested that the Commission address attendance of Commissioners and find members who can attend regularly. Ms. Reign opined that the Commission does not have the authority to do that. Ms. Rivera expressed her understanding that City Council may consider a motion to possibly include that language about attendance in some type of formal way. In response to a question from Ms. Batty, Ms. Zumar stated that she discussed this with Mayor Leary and it was recommended that the Chairperson contact the members who do not regularly attend meetings and request that if they cannot attend regularly that they resign from the post in order to have others appointed to the role who can attend. Mr. Rogers suggested that Appointment of Officers be added to the next Agenda, and recommended that whoever is appointed Chair take that concern to the City Administrator.

Agenda

Ms. Batty asked who sets the Agenda. Ms. Weirich stated that the Chair typically sets the agenda; however, in the absence of a Chair, Ms. Weirich stated that if the Commission set the agenda, she would pass it on to the City office. Mr. Rogers added that typically the City clerk will send the draft Agenda to him and the City Solicitor for review.

October Agenda Items:

- Roll Call
- Approval of Minutes
- Public Comment
- Appointment of Officers
- Discussion of rental vs homeownership, affordable housing, and trends

There being no further business to discuss, Ms. Reign called for a motion to adjourn.

A motion to adjourn was made by Ms. Zumar, seconded by Ms. Rivera and unanimously carried, and the meeting adjourned at 9:40 p.m.

Respectfully submitted,

Kathleen R. Weirich
City Stenographer